

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NUMBER: 1:22-cr-00336-CAB
)	
Plaintiff,)	JUDGE DAVID RUIZ
)	MAGISTRATE THOMAS PARKER
v.)	
)	<u>DEFENDANT’S REPLY TO</u>
ELIJAH S. PAYNE,)	<u>GOVERNMENT’S SUPPLEMENT</u>
)	<u>IN OPPOSITION TO PRETRIAL</u>
Defendant.)	<u>RELEASE</u>

Now Comes the Defendant, Elijah Payne, and by and through the undersigned counsel hereby submits his reply to the Government’s Supplement in Opposition to Pretrial Release. The Defendant has submitted that a material change of circumstances has occurred which justifies this Court reopening or alternatively rescinding the Order of Detention of July 7, 2022. The material change in circumstances is the dismissal of Cuyahoga County Case No. 669618 on July 14, 2022. A hearing was conducted on August 12, 2022, with supplemental briefing to be completed by August 19, 2022.

The Government continues to contend that the Defendant poses a serious risk to flee and is a serious risk to obstruct justice or attempt to obstruct justice under 18 U.S.C. § 3142(F)(2)(a) & (b) and that no condition or combination of conditions would assure the Defendant’s appearance as required. In support of its contention, the Government relies primarily on the subpoena response from Meta, the parent company of Instagram, that provided Instagram posts from an account linked to Defendant and geolocations. The photographs show drugs, money, and firearms. The geolocations purportedly show that Mr. Payne, or at least his phone, traveled to St. Louis, Missouri and Los Angeles, California. It should be pointed out that on the dates that the phone allegedly show Mr. Payne was traveling, he was not under any criminal charge nor was he

on bond or any other court-imposed movement limitation. There was no restriction on his travel. The Government has only offered unsupported allegations that Mr. Payne was trying to expand his criminal activity to those areas. (See, Transcript of Detention Hearing, July 7, 2022, Doc. # 93 Page ID # 305).

More significantly, there is no evidence known to the undersigned that Mr. Payne has traveled anywhere outside the jurisdiction since being charged with a state weapons offense in February, 2022. The record also shows that Mr. Payne not only appeared at his state arraignment in that case, Cuyahoga County Case No. 667921, but also appeared at pretrials conducted on May 2, May 23, June 2, June 16, and June 29 prior to his arrest and detention in this case. In April, 2022, Mr. Payne was charged with a far more serious case, Cuyahoga County Case No. 669618. He was charged with a felonious assault occurring at a West-side apartment building. Mr. Payne was ambushed and shot. He returned fire. Mr. Payne posted bond and continued to appear as required. That case was pending at the time of the detention hearing, but upon a finding of reasonable self-defense by the Cuyahoga County Prosecutor, was dismissed shortly thereafter. Mr. Payne has absolutely no history of non-appearance for court proceedings.

It is reasonable to assume that in a close case, the existence of a pending violent firearm case materially affected the Government's case in establishing that detention was necessary by a preponderance of the evidence. With that fact removed, it is submitted the balance tilts in the opposite direction and in favor of release.

The photos submitted by the Government and further described in its supplement should not continue to justify detention under 18 U.S.C. § 3142(f). The Government maintains the burden of proof to show no condition or combination of conditions could reasonably assure his appearance and the safety of the community. The Government has not shown a serious risk that

Mr. Payne will flee, or a serious risk that he will obstruct justice or attempt to obstruct justice under 18 U.S.C. § 3142(f)(2). The photos are historic, only showing the date of posting, not the date they were taken, or even what device took them. At the time they were posted, Mr. Payne had no criminal charges pending against him. On the other hand, he was aware of a federal investigation since February, 2022 and was indicted on two state cases in February and April and appeared each and every time while complying with all other terms of release. He has demonstrated he is not a flight risk. The Government's evidence regarding obstruction of justice is limited to Mr. Payne having allegedly fled police on one occasion.

The vast majority of non-violent young offenders are released on bail under similar circumstances. They are allowed to remain in the community and assist in the preparation of their defense. While Mr. Payne faces serious charges, they are non-violent. Factors weighing in favor of release under 18 U.S.C. § 3142(g) include that this is a non-violent, non-firearm, and non-controlled substance offense, the fact that Mr. Payne is a life-long resident of Cuyahoga County, graduating from Mayfield High School, and has no record of convictions or drug or alcohol issues. Finally, there is no evidence that Mr. Payne poses a threat to anyone if he is released. He has appropriate housing. To deny bail at this point, based on the Instagram photos and the Government's speculations about his travel, denies Mr. Payne the benefit of the presumptions offered him under established law. Conditions of pretrial supervision including non-contact with codefendants, home arrest, and electronic monitoring would be more than sufficient to serve all statutory interests considered under 18 U.S.C. § 3142. Mr. Payne's circumstances have changed with the dismissal of the felonious assault case, and he should be released on bail under 18 U.S.C. § 3142(f).

Respectfully submitted,

/s/ Michael J. Goldberg

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CERTIFICATE OF SERVICE

I hereby certify that On August 19, 2022 a true and correct copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Michael J. Goldberg

Michael J. Goldberg (0040839)

Attorney for Defendant